

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of)	
)	
Inquiry Required by the Satellite Home)	MB Docket No. 05-28
Viewer Extension and Reauthorization Act)	
On Rules Affecting Competition in the)	
Television Marketplace)	

To: Chief, Media Bureau

COMMENTS OF DUHAMEL BROADCASTING ENTERPRISES

Duhamel Broadcasting Enterprises (“Duhamel”), by its attorneys, hereby submits these Comments in response to the Commission’s Public Notice, Media Bureau Seeks Comment for Inquiry Required by the Satellite Home Viewer Extension and Reauthorization Act on Rules Affecting Competition in the Television Marketplace, DA 05-28 (released January 28, 2005).

Duhamel believes that in order to preserve local broadcast service, particularly in small and rural markets, it is important that existing rights to retransmission consent and program exclusivity be maintained.¹

Duhamel is the licensee of the ABC Television affiliates in the Rapid City, South Dakota and Cheyenne, Wyoming – Scottsbluff, Nebraska Nielsen Designated Market Areas (“DMAs”). Its stations bring ABC Television Network programming, syndicated programming, and local news and informational programming to the residents of a vast geographic area encompassing portions of South Dakota, Colorado, Wyoming, and Nebraska. If the Duhamel stations’ service area were superimposed on the East Coast of the United States, it would stretch from north to

¹ Indeed, given the size of the Duhamel DMAs as described herein, Duhamel would support an increase in the zone of protection granted to stations holding program exclusivity rights on cable systems as well as application of these rules to DBS.

south, from Boston, Massachusetts to Washington, DC, and from east to west, from the Atlantic Ocean to Buffalo, New York. The area would cover 20 different Nielsen television Designated Market Areas (“DMAs”) with a total of 22,292,100 television households.² The combined total population of the Duhamel DMAs, in contrast, is 147,140 television households.

To reach this widely dispersed population, Duhamel operates four full-power VHF television stations, KOTA-TV, Rapid City, South Dakota; KHSD-TV, Lead, South Dakota; KSGW-TV, Sheridan, Wyoming; and KDUH-TV, Scottsbluff, Nebraska, where an East Coast broadcaster would operate only one and in most cases reach a far larger population. Three of these stations, KOTA-TV, KHSD-TV and KSGW-TV, serve the Rapid City market which consists of 93,220 households.³ KDUH-TV serves the Cheyenne-Scottsbluff DMA which consists of only 53,920 television households.⁴ The facilities with which these stations operate are enormous and costly. The KDUH-TV tower is 1500 feet tall and the station was recently rebuilt after a collapse at a cost of more than \$5 million. Each of the four stations has also been converted to digital operation.

On weekdays, the stations air local news at 5:30 a.m., noon, 5:30 p.m., and 10:00 p.m., as well as local inserts during the “Good Morning America” program, and on weekends, the stations air news at 10:00 p.m. The stations also provide vital emergency information throughout their viewing area. For example, KDUH-TV provides vital emergency information regarding the

² Those markets are: New York, NY; Philadelphia, PA; Boston, MA; Washington, DC; Baltimore, MD; Hartford-New Haven, CT; Buffalo, NY; Harrisburg-York-Lancaster-Lebanon, PA; Providence, RI – New Bedford, MA; Wilkes Barre-Scranton, PA; Albany-Schenectady-Troy, NY; Burlington, VT – Plattsburgh, NY; Syracuse, NY; Springfield – Holyoke, MA; Rochester, NY; Johnstown-Altoona, PA; Binghamton, NY; Utica, NY; Watertown, NY; and Elmira, NY. Television and Cable Factbook, Vol. 73 at A-1 – A-6 (Warren Publishing, 2005).

³ Id. at A-6.

⁴ Id.

conditions on US Highway 20, major thoroughfare in Nebraska that frequently experiences "white out" conditions making passage impossible and resulting in freezing deaths. In addition, the area suffers from severe weather conditions such as tornados, hail and damaging wind. Rapid City experiences flash flooding.

However, the populations living within the contours of KDUH-TV, KHSD-TV, and KSGW-TV are so small and dispersed that the operations of these stations must be subsidized by the operations of KOTA-TV located in the more populated central Rapid City viewing area. It is a simple matter of station economics that Duhamel maximize its viewing to support all of its stations and continue to serve its audience.

Because of the rugged terrain in the Duhamel markets, cable and satellite penetration are relatively high. Accordingly, access to such systems has long been of great importance to the Duhamel stations and the importation of distant signals into the heart of the Duhamel stations' economic market has long posed a very real threat to the stations. As a result, Duhamel was an original member of the 97 Television Stations. The 97 Television Stations was an informal association of television stations located primarily in smaller markets. The association was formed in opposition to the 1986 Joint Industry Compromise proposal to eliminate the Network Nonduplication Rules. The group commented extensively in the Commission's proceeding regarding program exclusivity in the cable and broadcast industries (Gen. Docket No. 87-24) and in its proceeding regarding competition, rate deregulation and the provision of cable television service (MM Docket No. 89-600). The group ultimately comprised more than 120 television stations.

As noted above, in Duhamel's experience, preservation of the current broadcaster retransmission consent rights and network nonduplication and syndicated exclusivity protections

is vital to the continued viability of free over-the-air television, particularly in smaller markets and rural areas. Each of these rights is important in and of itself, but they are also highly interdependent and interwoven with laws governing copyright protections. Together, these laws and regulations create an environment in which broadcasters and program producers can effectively negotiate for carriage of programming and commit to invest in programs without being undermined by the importation of duplicating distant signals. Small market stations have small economic bases from which to derive operating funds. These stations must be assured that the investment they make to purchase programming and the time they dedicate to the carriage of network programming will not be wasted when viewers are able to see the same programming on an imported station. Without that assurance, these stations do not have any incentive to compete for the best quality programming available that will be of interest to their viewers, nor do they have the bargaining power to secure such programming from producers.

Moreover, over time, the loss of program exclusivity would accelerate the siphoning of viewers to distant signals and cause a never-ending downward spiral in the quality of local programming available in smaller markets. As more and more viewers tune to the distant signals imported into the market, there is a danger that the viewing patterns of entire counties will shift to the point that they are reassigned from the smaller market DMA to the larger DMA. With less advertiser revenue, the quality of locally produced programming, and even the station's physical plant, suffers. Ultimately, the economic base for the operation of the small market station is eroded to the point that small market operation is no longer economically viable. Rural residents would be left without the local news and public affairs programming and emergency information previously provided by the small market television station and have instead only generic

programming aimed at the residents of a distant large market. This process is underway in the Duhamel DMAs with counties being reassigned some 200 to 400 miles to the Denver market.

The Commission's Public Notice requested that studies be submitted in response. However, there was insufficient time to commission such a study by this date. Duhamel believes that the Commission can take official notice of the reassignment of certain counties located outside of the Duhamel stations' zone of exclusivity from the Duhamel DMAs to the Denver DMA as support for Duhamel's position. Duhamel believes that, should the current program exclusivity rules and rights to negotiate for cable and satellite carriage be eroded in any way, such reassignments will be commonplace throughout the country leading to the loss of many rural and small market television stations.

Given the impact any such effort could have on the Duhamel stations, Duhamel intends to review all of the Comments submitted in this proceeding and actively respond to them, as appropriate, to assure that existing broadcaster protections are not eroded.

Respectfully submitted,

DUHAMEL BROADCASTING ENTERPRISES

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Dated: March 1, 2005

DECLARATION

I, William F. Duhamel, President of Duhamel Broadcasting Enterprises, hereby declare under penalty of perjury that I have reviewed the foregoing "Comments of Duhamel Broadcasting Enterprises," and, except for (a) matters cited therein contained in the FCC's records, (b) matters for which other support is provided, and (c) matters of which the Commission may take official notice, the facts set forth therein are true and correct to the best of my personal knowledge and belief.


William F. Duhamel

Dated: March 1, 2005